

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Jacobson	Team: Squad #9	CCRB Case #: 201407437	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/16/2014 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 47	18 Mo. SOL 1/16/2016	EO SOL 1/16/2016	
Date/Time CV Reported Thu, 07/17/2014 10:54 PM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 07/23/2014 1:38 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Jesus Guzman	02364	925409	NARCB BX
2. POM James Simpson	29530	943420	NARCB BX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Orecchio	04343	933124	NARCB BX
2. DT3 Armengol Deida	00282	940064	NARCBQN
3. DT1 U/C 22		000000	NARCB BX
4. U/C 5049		000000	

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Jesus Guzman	Abuse: Det. Jesus Guzman stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.POM James Simpson	Abuse: PO James Simpson stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.DT3 Jesus Guzman	Abuse: Det. Jesus Guzman frisked § 87(2)(b)	§ 87(2)(b)
D.DT3 Jesus Guzman	Abuse: Det. Jesus Guzman searched § 87(2)(b)	§ 87(2)(b)

### Case Summary

On July 16, 2014, at approximately 6:00 p.m., § 87(2)(b) and § 87(2)(b) entered § 87(2)(b)'s vehicle, which was legally parked in front of his residence at § 87(2)(b) in the Bronx. § 87(2)(b) and § 87(2)(b) were sitting in the parked car for several minutes when two unmarked police cars pulled up next to them and two officers, Det. Jesus Guzman and PO James Simpson of Narcotics Borough Bronx, approached the car. The officers asked all occupants to exit the vehicle and Det. Guzman handcuffed, frisked, and searched § 87(2)(b) (Allegations A, B, C, and D). § 87(2)(b) was released and none of the occupants of the vehicle were arrested or summonsed. § 87(2)(b) asked for Det. Guzman's and PO Simpson's names and shield numbers, which they provided.

This case was originally assigned to Inv. Alex Schiavo. Upon his promotion, the case was reassigned to Inv. Leanne Fornelli on October 27, 2014. Upon agency restructuring, the case was reassigned to the undersigned on January 9, 2015.

### Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation § 87(2)(b). A notice of claim request was sent on April 28, 2015, and the results will be added to the case file upon receipt. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer Criminal Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) and the first involving § 87(2)(b) (encl. B4-B6).
- Det. Guzman has been a member of the NYPD for 15 years, and has had 16 previous CCRB allegations involving six cases with no substantiated allegations. Since this complaint, Det. Guzman has had two other allegations against him, in one case, and one of the allegations is a frisk allegation, the disposition of which is currently pending. Det. Guzman has had two prior search of person allegations, both of which were unsubstantiated, one prior stop allegation, which was unsubstantiated, and one prior frisk allegation, which was exonerated (encl. B1-B2).
- PO Simpson, who has been promoted to the rank of detective since the time of the incident, has been a member of the NYPD for eight years, and has had seven previous CCRB allegations involving two cases. In CCRB case 200904056, allegations of frisk and stop were substantiated with command discipline recommended (encl. B3).

### Findings and Recommendations

**Allegation A – Abuse of Authority: Det. Jesus Guzman stopped § 87(2)(b)**

**and § 87(2)(b)**

**Allegation B – Abuse of Authority: PO James Simpson stopped § 87(2)(b)**

**and § 87(2)(b)**

It is undisputed that Det. Guzman and PO Simpson stopped § 87(2)(b) and § 87(2)(b) while they were seated in § 87(2)(b)'s car.

§ 87(2)(b) stated that he came out of his building with § 87(2)(b) and greeted § 87(2)(b) who had already been outside wiping down § 87(2)(b)'s car. § 87(2)(b) and § 87(2)(b) quickly shook hands and then immediately got into his vehicle. § 87(2)(b) estimated

that he, § 87(2)(b) and § 87(2)(b) were seated in the car for approximately three minutes, when an unmarked grey minivan drove the wrong way down the street. Two other unmarked vehicles also pulled up behind § 87(2)(b)'s vehicle. Two officers, identified as Det. Guzman and Det. Simpson, approached § 87(2)(b)'s vehicle. Det. Guzman immediately opened § 87(2)(b)'s door, removed § 87(2)(b) from the vehicle, and handcuffed him. Approximately ten seconds after § 87(2)(b) exited the vehicle, Det. Simpson asked § 87(2)(b) and § 87(2)(b) to exit the vehicle as well with (encl. E3-E4).

§ 87(2)(b) stated that after she, § 87(2)(b) and § 87(2)(b) entered § 87(2)(b)'s vehicle, they were seated in the parked vehicle for approximately five to ten minutes, when an unmarked dark vehicle pulled up from behind and stopped next to the vehicle. § 87(2)(b) stated that immediately after, an unmarked grey sedan came from the other direction, going the wrong way down East 219<sup>th</sup> Street, which is a one way street. Two plainclothes officers from the first car approached the driver's side of § 87(2)(b)'s car and four plainclothes officers exited the second vehicle and approached the passenger's side. One of the officers from the first vehicle, identified as Det. Guzman, asked § 87(2)(b) to exit the vehicle and one of the officers from the second car asked § 87(2)(b) to exit the vehicle. Another officer also asked § 87(2)(b) to exit the vehicle. § 87(2)(b) stated that he was on the street when § 87(2)(b) and § 87(2)(b) came down from their building. § 87(2)(b) and § 87(2)(b) "pounded" hands for approximately one to two seconds and then immediately entered § 87(2)(b)'s vehicle. They sat in the parked vehicle for approximately three minutes when § 87(2)(b) observed a black Dodge cargo van drive the wrong way down East 219<sup>th</sup> Street. A grey Nissan Sentra and a black Impala also approached § 87(2)(b)'s vehicle from the rear. There were two officers in each of the vehicles. Det. Guzman approached § 87(2)(b)'s window, knocked on it and opened the car door, and after § 87(2)(b) had exited the vehicle, handcuffed him and walked him to the rear of the car. Two other officers also asked § 87(2)(b) and § 87(2)(b) to exit the vehicle, which they complied (encl. F2-F3, G2).

Det. Guzman stated that he received a description over the radio of a vehicle with two possible subjects and a hand to hand transaction, which could have been a possible drug transaction. Det. Guzman could not recall any details of the description besides that, but believed it matched § 87(2)(b). Det. Guzman could not recall which undercover officer put the description over the radio or where the undercover officer was when the observation was made. Det. Guzman did not witness any part of the hand to hand transaction himself and after viewing the UF-250 that he had prepared regarding § 87(2)(b) stated that the stop was based off of the undercover officer's observations and not his own.

PO Simpson stated that two undercover officers were walking down East 219<sup>th</sup> Street, when they transmitted over the radio that they had possibly observed a hand to hand transaction within a vehicle. The undercover officers were not using binoculars or any observation tools. PO Simpson stated that a description was also transmitted over the radio, which consisted of three males in a black car; PO Simpson thought the transmission also included the make and model of the car, but was not sure. He stated that the transmission was very quick and noted that the undercover who made the transmission "gets excited" over the radio and kept telling the officers to get to the car. PO Simpson stated there were definitely details included in the transmission, but all he could remember was that it consisted of a hand to hand transaction, and the undercover officers remained in the vicinity of the vehicle and directed Det. Guzman and PO Simpson to it. PO Simpson stated that § 87(2)(b)'s vehicle was stopped solely on the observation by the undercover officer (encl. I5-I7). Sgt. Orecchio arrived to the incident location after Det. Guzman and PO Simpson had already stopped the civilians. He stated that when he arrived, he observed Det. Guzman with a handcuffed individual and PO Simpson on the passenger's side of the vehicle with two individuals. Sgt. Orecchio stated that prior to arriving at the scene, he heard a transmission from an undercover officer, who he identified as U/C 22. U/C 22 transmitted that he

believed he had observed a hand to hand transaction inside a vehicle parked in front of § 87(2)(b). Sgt. Orecchio recalled that the transmission described the vehicle as a black sedan, occupied to two to three civilians, but could not recall any other details. Det. Deida, who was in the car with Sgt. Orecchio, did not recall any details of the incident. U/C 22 stated that on the day of the incident, he was the main undercover officer for a buy and bust operation, but he could not recall any details of the incident (encl. L5-L6).

A stop requires reasonable suspicion that the individual has committed, is committing, or about to commit a crime. People v. DeBour, 40 N.Y.2d 210 (N.Y.S. Ct. Of Appeals 1976) (encl. A1-A11).

§ 87(2)(g)

**Allegation C – Abuse of Authority: Det. Jesus Guzman frisked § 87(2)(b)**

**Allegation D – Abuse of Authority: Det. Jesus Guzman searched § 87(2)(b)**

Det. Guzman admitted frisking and searching § 87(2)(b)

Det. Guzman stated he approached the vehicle and asked § 87(2)(b) to exit, with which he complied. He did not recall § 87(2)(b) making any furtive movements at this time, or at any point during the incident. Det. Guzman could not recall if he handcuffed § 87(2)(b) or if it was necessary to handcuff him. He did not recall if he felt unsafe at any point during the incident or if § 87(2)(b) ever reached for anything inside the car. Det. Guzman first stated that he may have frisked § 87(2)(b) but could not recall the whole interaction with him. Later, he revised his statement and said that he patted down § 87(2)(b)'s waist area and explained to § 87(2)(b) that he was conducting the pat down for both of their safety. Det. Guzman did not recall if there were any bulges or anything resembling a weapon on § 87(2)(b) nor did he find any weapons.

A UF-250 was prepared by Det. Guzman for § 87(2)(b)'s stop. The UF-250 describes the reason for § 87(2)(b) being frisked as “furtive movements.” Det. Guzman did not know to what this referred to, but stated that he “must have remembered at the time of filling it out.” Although Det. Guzman stated that there was never a need during the stop to place his hand inside § 87(2)(b)'s pockets and he did not recall doing this or seeing any other officer do this, the UF-250 lists § 87(2)(b) as being searched. Det. Guzman stated that this was probably related to the possible drug transaction and he could not recall what areas he searched. Det. Guzman had included a handwritten note on the UF-250 reading “possible drug possession/weapon.” He could not recall what suspicion he had regarding a weapon or if the radio transmission contained information regarding a weapon (encl. H4-H9).

PO Simpson did not see § 87(2)(b) frisked or searched, but stated he was later informed by Det. Guzman that both these actions had occurred. He did not see anything that made him suspect that § 87(2)(b) had a weapon on him and stated that at no time during the incident did he fear for his safety. Sgt. Orecchio stated that he did not know at the time of the

incident if Det. Guzman had done anything besides handcuff § 87(2)(b) and did not learn of any other actions later. Sgt. Orecchio did not see Det. Guzman frisk or search § 87(2)(b) and had no conversation with him about a frisk or a search; although he signed off on the UF-250 prepared by Det. Guzman.

An officer must have reasonable suspicion that a suspect is armed to conduct a frisk and must have probable cause to believe that a person committed a crime in order to search someone. People v. DeBour, 40 N.Y.2d 210 (N.Y.S. Ct. Of Appeals 1976) (encl. A1-A11). Additionally, a report of a drug crime by itself does not provide officers with reasonable suspicion that a suspect is armed and dangerous. People v. Gonzalez, 295 A.D.2d 183 (N.Y. App. Div. 2002) (encl. A12-A13).

§ 87(2)(g)

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Pod: 9

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date